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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,702	04/09/2004	Isabelle Roux	P25016	8738

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GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON, VA 20191

EXAMINER

HOEY, ALISSA L

ART UNIT	PAPER NUMBER
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3765

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	01/19/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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gbpatent@gbpatent.com
pto@gbpatent.com

Office Action Summary

Application No.

10/820,702

Applicant(s)

ROUX, ISABELLE

Examiner

Alissa L. Hoey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 8-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 18-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This is in response to amendment received on 11/13/06. Claim 1 was amended and claims 18-29 were newly added. Claims 8-17 are withdrawn and claims 1-7 and 18-29 are finally rejected below.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: claims 1, 21, 22 and 27 include limitations that are not found in the specification.

Claim 1: "and being movable relative to the inner portion"

Claim 21: "an air gap"

Claim 22: " the overlying outer portion is movable relative to an underlying surface of the inner portion"

Claim 27: "the outer portion is not fit snugly to the body part of the wearer"

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by March (US 4,843,654).

In regard to claim 19, March teaches an article of clothing (10) comprising an inner portion (16), adapted to fit snugly to a wearer, comprising at least one connecting band (18 or 19) extending along at least one limb of a body of the wearer (figures 6-8). An outer portion (14) adapted to fit more loosely to the wearer, positioned over the inner portion (16). The inner portion and the outer portion are assembled to one another by the connecting band extending along at least one limb (18 or 19: figure 6-8).

6. Claims 1-3, 19, 21- 23 and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Zelano (US 2,391,535).

In regard to claim 1, Zelano teaches an article of clothing comprising an inner portion (12), adapted to fit snugly to a wearer, comprising at least one connecting band (13) extending along at least one limb of a body of the wearer (figures 1-10). An outer portion (10) adapted to fit more loosely to the wearer, positioned over the inner portion and being movable to the inner portion (12). The inner portion and the outer portion are assembled to one another by the connecting band extending along at least one limb (see figures 1-6).

In regard to claim 2, Zelano teaches the outer portion covering the inner portion completely (figures 1-10).

In regard to claim 3, Zelano teaches the connecting band capable of being located in a friction zone of the article of clothing (figures 1-10).

In regard to claim 19, Zelano teaches an article of clothing comprising an inner portion (12), adapted to fit snugly to a wearer, comprising at least one connecting band (13) extending along at least one limb of a body of the wearer (figures 1-10). An outer portion (10) adapted to fit more loosely to the wearer, positioned over the inner portion (12). The inner portion and the outer portion are assembled to one another by the connecting band extending along at least one limb (see figures 1-6).

In regard to claim 21, Zelano teaches the outer portion overlies the inner portion with an air gap between the inner and outer portions (figures 3 and 6).

In regard to claim 22, Zelano teaches an article of clothing comprising an inner portion (10, 12) adapted to extend in a direction around a transverse periphery of a body part of a wearer (figures 1-10). An outer portion (10) overlying the inner portion (12) along less than an entirety of the transverse periphery of the body part of the wearer, one of the inner and outer portions having a pair of peripherally spaced-apart longitudinally extending edges (figures 3, 6). A connecting band (13) connecting the pair of peripherally spaced-apart longitudinally extending edges (figures 3, 6). The overlying portion being movable relative to an under laying surface of the inner portion (figures 3, 6).

In regard to claim 23, Zelano teaches the connecting band (13) comprising a material distinct from and assembled to the inner and outer portions (page 1, column 2, lines 6-15).

In regard to claim 27, Zelano teaches the inner portion (12) being adapted to fit snugly to the body part of the wearer while the outer portion (10) is not fit snugly to the body part of the wearer (see figures 1, 3, 6).

In regard to claim 28, Zelano teaches a space is located between the inner and outer portion and the underlying surface of the inner portion (figures 3, 6).

In regard to claim 29, Zelano teaches both of the inner and outer portions having respective pairs of peripherally spaced-apart longitudinally extending edges (figures 3, 6).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 5, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zelano.

Zelano teaches a garment as described above in claims 1, 3 and 22. However, Zelano fails to teach the connecting band being made out of an elastic material.

Zelano teaches the connecting band being made out of lace.

It would have been obvious to have provided the connecting band being made out of an elastic material, lace material or an inextensible material, because as long as the connecting band connects the peripheral edges of the inner and outer portion the

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connecting band can be made from any material and as supported in Applicant's specification in paragraph 0015 and 0051).

9. Claims 6, 7, 18, 20 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zelano in view of Polsky (US 4,785,480).

Zelano teaches a garment as described above. However, Zelano fails to teach the friction zone is a crotch area of each of the two legs and the connecting band is located along the crotch area of the two legs of the article of clothing. Further, Zelano fails to teach the article of clothing being shorts.

In regard to claims 6, 18 and 26, Polsky teaches the article of clothing including two legs and the friction zone is a crotch area of each of the two legs (figures 1, 5). The connecting band is located along the crotch area of each of the two legs of the article of clothing (figures 1, 5).

In regard to claim 7, Polsky teaches the article of clothing being shorts (column 2, lines 5-7).

In regard to claim 20, Zelano teaches the article of clothing including two leg portions comprising a crotch area (figures 1, 2, 5 and 7). The outer portion overlaps the inner portion around less than an entire circumferential periphery of the limb (figures 1-10). At least one of the outer and inner portions having a first longitudinally extending edge and a second longitudinally extending edge (figures 3, 6). The first and second longitudinally extending edges being circumferentially spaced apart (figure 3, 6).

Polsky teaches the connecting band is located in the crotch area (figures 1, 5).

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It would have been obvious to have provided the garment with inserts of Zelano with the crotch insert short garment of Polsky, because the garment of Polsky provided with the connecting band in the crotch area would provides a lower body garment that will not rise up or bind on the wearer when the wearer sits, bends, walks or performs any other physical motion.

10. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zelano in view of Rosenberg (US 2,112,788).

Zelano teach the inner portion comprises an elastic material.

In regard to claim 25, Rosenberg teaches an inner portion of a jacket comprising an elastic material (figures 1 and 2, identifier 7: column 1, lines 19-33).

It would have been obvious to have provided the garment of Zelano with the elastic inner portion material of Rosenberg, since the garment of Zelano provided with an inner elastic portion would provide a garment that allows for some degree of resilience, permits free movement of the sleeves relative to the body of the garment and serves as a resilient retention means for the sleeves and shoulder of the garment.

Response to Arguments

11. Applicant's arguments with respect to claims 1-7 and 18-29 have been considered but are moot in view of the new ground(s) of rejection.

In regard to claim 19 being rejected by March (4,843,654), Applicant argues that March fails to teach the inner portion fitting snugly to the wearer and the outer portion fitting more loosely to the wearer.

Examiner disagrees, since March teaches an inner lining portion and an outer lining portion. The inner portion would be more snug to the user's body than the outer portion based upon the spaced distance of the portion layers from the body. If the inner portion layer is against the users body and the outer layer portion is located away from the user's body the outer layer portion inherently fits more loosely to the wearer's body than the inner portion. As claimed, March teaches the limitations of claim 19.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ALH



ALISSA HOEY
PRIMARY EXAMINER
TECHNOLOGY CENTER 3700